

Mixed Marriage Without Agreements In Indonesia's Bawean-Gresik Muslim Community: A Legal Pluralism Perspective

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This research examines mixed marriages without agreements in Indonesia's Bawean-Gresik Muslim Community. A mixed marriage refers to a marriage between an Indonesian citizen and a foreign national under Article 57 of the Indonesian Marriage Law, while a marriage agreement is a prenuptial or postnuptial agreement governing marital property. Although legally recognised, many mixed marriages are conducted without such agreements, reflecting the interaction of religious

authority, legal consciousness, and legal pluralism. This research employs an empirical socio-legal approach informed by Antonio Gramsci's theory of hegemony, legal consciousness theory, and legal pluralism. Data were collected through in-depth interviews with mixed-marriage couples, *kiai*, village officials, and community leaders, supported by Indonesian marriage legislation, the Compilation of Islamic Law, and Constitutional Court Decision No. 69/PUU-XIII/2015. Data were analysed using thematic-interpretative analysis. This study shows that the legitimacy of mixed marriages is primarily shaped by the symbolic authority of *kiai*, who consider marriages religiously valid despite the absence of marriage agreements. This authority reinforces public legal consciousness and collective acceptance of the practice. Rather than merely reflecting non-compliance with state law, the practice represents normative negotiation among Islamic law, local culture, and state law. This research contributes to socio-legal scholarship by explaining how religious authority mediates legal compliance within plural legal systems.

Penelitian ini mengkaji praktik perkawinan campuran tanpa perjanjian pada komunitas Muslim Bawean-Gresik, Indonesia. Perkawinan campuran didefinisikan sebagai perkawinan antara warga negara Indonesia dan warga negara asing sebagaimana diatur dalam Pasal 57 Undang-Undang Perkawinan Indonesia, sedangkan perjanjian perkawinan merujuk pada perjanjian pra-nikah atau pasca-nikah yang mengatur harta perkawinan. Meskipun diakui secara hukum, banyak perkawinan campuran dilakukan tanpa perjanjian semacam itu; hal ini mencerminkan interaksi antara otoritas keagamaan, kesadaran hukum, dan pluralisme hukum. Penelitian ini menggunakan pendekatan sosio-legal empiris yang didasarkan pada teori hegemoni Antonio Gramsci, teori kesadaran hukum, dan pluralisme hukum. Data dikumpulkan melalui wawancara mendalam dengan pasangan perkawinan campuran, *kiai*, perangkat desa, dan tokoh masyarakat, serta didukung oleh peraturan perundang-undangan perkawinan Indonesia, Kompilasi Hukum Islam, dan Putusan Mahkamah Konstitusi No. 69/PUU-XIII/2015. Data dianalisis menggunakan metode analisis tematik-interpretatif. Hasil penelitian menunjukkan bahwa legitimasi perkawinan campuran terutama dibentuk oleh otoritas simbolik *kiai*, yang memandang perkawinan tersebut sah secara agama meskipun tidak ada perjanjian perkawinan. Otoritas ini memperkuat kesadaran hukum masyarakat dan penerimaan kolektif terhadap praktik tersebut. Praktik ini tidak sekadar mencerminkan ketidakpatuhan terhadap hukum negara, melainkan merepresentasikan negosiasi normatif antara hukum Islam, budaya lokal, dan hukum negara. Penelitian ini memberikan kontribusi pada kajian sosio-legal dengan menjelaskan bagaimana otoritas keagamaan memediasi kepatuhan hukum dalam sistem hukum yang majemuk.

Keywords: *kiai hegemony; legal non-compliance; marriage agreements; mixed marriage practices; public perception.*

Introduction

Marriage agreements, including prenuptial and postnuptial agreements, play a vital role in contemporary family law. They provide legal certainty regarding marital property, as

under Indonesian law, assets acquired during marriage are presumed to be joint property. These agreements also address issues related to inheritance, citizenship, and the protection of spouses' civil rights (Windayanti, Narsudin and Natanegara, 2025). Although classical Islamic jurisprudence (*fiqh*) recognizes a marriage as valid upon fulfillment of its essential pillars—*ijab-qabul* (offer and acceptance), the presence of a *wali*, witnesses, and *mahr* (dowry)—it does not regard marriage agreements as elements determining the validity of the marriage itself. Instead, such agreements are generally understood as civil arrangements concerning the legal consequences of marriage rather than its religious validity (Dewi, Herwastoeti, and Hapsari, 2023; Patawari et al., 2026; Rosmita, Afifah, and Nasaruddin, 2022). In contrast, contemporary legal systems increasingly regulate marriage not only as a religious institution but also as a civil legal relationship producing significant consequences for property ownership, inheritance, citizenship, and legal protection (Arif and Sari, 2023; Hartini, 2024). Consequently, marriage agreements have evolved into important legal instruments for safeguarding spouses' rights and obligations while minimising future legal disputes.

Comparative legal scholarship demonstrates that marriage agreements are widely recognized across different legal traditions as legitimate legal instruments for regulating spouses' property rights, allocating financial responsibilities, and providing legal certainty in the event of marital dissolution or cross-border family disputes (Judiasih et al., 2021; Handayani and Cahyaningsih, 2024; Rizani et al., 2026). Civil law jurisdictions, such as France, Germany, and the Netherlands, allow spouses to determine their preferred matrimonial property regime through formal agreements, whereas common law jurisdictions generally recognize prenuptial agreements provided they satisfy procedural requirements of voluntary consent, disclosure, and fairness (Rimi, 2023; Rizqareka et al., 2025). Indonesia has likewise incorporated marriage agreements into its legal framework, particularly to address the legal implications of mixed marriages involving Indonesian citizens and foreign nationals. The legal significance of these agreements has expanded following Constitutional Court Decision No. 69/PUU-XIII/2015, which permits marriage agreements to be concluded before, during, or after marriage, thereby providing greater contractual flexibility and legal protection for married couples (Asvina and Budhiwan, 2022; Anugerahayu et al., 2026).

Despite these legal developments, mixed marriages in Indonesia are still conducted without a marriage agreement and without considering the legal consequences (Mujiburohman et al., 2023; Salsabilla, Muryanto and Kusumawati, 2024; Prinz, 2025). Research generally attributes this phenomenon to administrative barriers, limited legal awareness, inadequate legal literacy, and cultural perceptions that regard marriage agreements as unnecessary or inconsistent with mutual trust (Hulukati, 2024). Other studies emphasize that although marriage agreements strengthen legal certainty and family resilience, their implementation remains limited as many couples favor religious and social considerations over formal legal arrangements (Hafidzi et al., 2022; Muslimin et al., 2024). However, these studies primarily examine legal regulation and individual legal behaviour, often overlooking how religious authority, community legal consciousness, and local socio-cultural structures collectively shape legal decision-making in communities where religious legitimacy surpasses formal state law (Chua, 2022; Hertogh, 2024). This unresolved issue provides an important entry point for examining mixed marriages through the perspectives of legal pluralism, religious authority, and socio-legal studies (Hamdan and Yunita, 2023; Schlesinger, 2025).

Existing studies indicate that the absence of marriage agreements in mixed marriages is associated with administrative complexity, limited legal literacy, uncertainty regarding property rights, and socio-cultural perceptions that regard such agreements as unnecessary or inconsistent with marital trust (Arsikab, 2023; Hartanto and Susilo, 2025). These studies generally follow three analytical approaches. The first employs a juridical perspective, focusing on marriage laws and the legal consequences of marriage agreements, particularly regarding citizenship, marital property, and legal certainty (Afhami, 2024; Lukmanulhakim, Guntara, and Abbas, 2025).

The second perspective adopts a socio-legal approach, arguing that legal behaviour is shaped by statutory regulations, administrative barriers, competing normative orders, community legal consciousness, and local socio-cultural practices operating within a plural legal system (Merry, 2022; Hertogh, 2024). Consequently, compliance with state law is frequently negotiated through religious and customary norms rather than determined solely by formal legal rules (Umar, Mawardi, Tsuji, 2023; Shahar and Yefet, 2024).

The third section focuses on the theological dimensions of marriage, explaining how Islamic jurisprudence defines religious legitimacy independently of state administrative requirements (Dibaj and Sauqi, 2026; Nadhifah and Nur, 2026). Although these studies have substantially enriched the literature on mixed marriages, they rarely explain how religious authority, community legal consciousness, and local social structures interact simultaneously to sustain the practice of mixed marriages without marriage agreements. Consequently, the mechanisms through which religious legitimacy mediates legal compliance within Indonesia's plural legal order remain insufficiently understood (Turner and Wiber, 2022; Akbar and Laman, 2025; Romli, Zakaria and Fudholi, 2025).

This research focuses on the Muslim community of Bawean Island, Gresik Regency, East Java, a society characterized by long-standing traditions of international migration, strong communal solidarity, and the enduring religious authority of *kiai* (Sholik et al., 2016; Hidayatullah, Laut and Bawean, 2025). Baweanese migration to Malaysia, Singapore, and several Middle Eastern countries has generated extensive transnational family networks and contributed to the increasing prevalence of mixed marriages involving Indonesian citizens and foreign nationals (Akbar and Laman, 2025). At the same time, *kiais* continue to occupy a central position in regulating family life by providing religious guidance, resolving social disputes, and legitimizing marital practices through their interpretation of Islamic law and their symbolic authority within local communities (Dibaj and Sauqi, 2026; Nadhifah and Nur, 2026). Within this socio-religious structure, marriages that fulfil the essential pillars (*rukun*) and conditions (*syarat*) of Islamic law are widely regarded as religiously and socially valid, even when they do not meet the administrative requirements prescribed by Indonesian family law. Consequently, the absence of a marriage agreement is understood not merely as an administrative omission but as a socially negotiated legal practice shaped by religious legitimacy, collective legal consciousness, and everyday legal pluralism (Hariri, Babussalam, 2024; Schlesinger, 2025).

This research argues that the persistence of mixed marriages without marriage agreements cannot be explained solely by limited legal knowledge or administrative constraints. Rather, it reflects a process of religiously mediated legal consciousness, whereby the symbolic authority of *kiai* shapes community perceptions of legal legitimacy and influences legal decision-making.

This argument draws upon Gramsci's concept of cultural hegemony, which explains how dominant authorities secure social consent through moral and intellectual leadership rather than coercion (Hoare, 1992). A perspective increasingly employed to analyse the interaction between religious authority and legal governance in contemporary plural societies (Crouch, 2021). It is further informed by legal consciousness theory, which conceptualises legal behaviour as socially constructed through everyday interactions among law, culture, religion, and community values (Chua, 2022; Kalra, 2024). In addition, the analysis is grounded in contemporary legal pluralism scholarship, which emphasises that state law, religious norms, and customary rules coexist, compete, and are continuously negotiated in everyday social life rather than operating as mutually exclusive legal systems (Benda-beckmann and Turner, 2020; Merry, 2022; Hariri, Babussalam, 2024). Together, these theoretical perspectives explain why religious legitimacy frequently becomes the primary normative reference through which community members interpret, negotiate, and selectively comply with state law while maintaining social acceptance within the local Muslim community.

This research focuses on research question: How do the authority and religious hegemony of *kiai* shape the legal awareness of mixed-marriage couples in the Bawean–Gresik Muslim community to forgo marriage agreements under Indonesian law, and what socio-legal implications emerge from the interaction between religious legitimacy and state legal regulations? The research contributes empirical evidence from one of Indonesia's most distinctive transnational Muslim communities. Theoretically, it advances the concept of religiously mediated legal consciousness by integrating Gramsci's theory of hegemony, legal consciousness theory, and legal pluralism into a unified socio-legal framework. The findings offer policy-relevant insights for developing culturally responsive family-law reforms that strengthen the protection of women's and children's rights while acknowledging the continuing influence of local religious authority in shaping legal practice (Bruning, MR, Doek, 2021; Rogula et al., 2026).

Method

This research employed an empirical legal research design using a socio-legal approach, which examines law not merely as a body of normative rules but also as a social institution

operating within its cultural, political, and institutional contexts (Afandi, 2022). This design examines the interaction between formal legal norms governing marriage agreements in mixed marriages and the social practices of the Bawean–Gresik Muslim community. The socio-legal framework integrates normative and empirical analyses (Taekema, 2021). The normative analysis examined Law Number 1 of 1974 on Marriage, Law Number 12 of 2006 on Citizenship, and Constitutional Court Decision Number 69/PUU-XIII/2015 to identify the legal status, function, and significance of marriage agreements. The empirical analysis investigated how these legal norms are interpreted, negotiated, or disregarded in everyday community practices, particularly in relation to religious authority and legal consciousness (Webley, 2019).

Fieldwork was conducted from October 2024 to July 2025 in six villages across Sangkapura and Tambak Districts, Bawean Island, Gresik Regency. The research sites were purposively selected based on three criteria: high international migration, the prevalence of mixed marriages, and the strong influence of local religious authority. Data were collected through participant observation, in-depth interviews, and document analysis involving 20 informants selected through purposive and snowball sampling. Informants included mixed-marriage couples, *kiai*, officials from the Office of Religious Affairs (KUA) and the Ministry of Religious Affairs, village officials, community leaders, and representatives of the Indonesian Mixed Marriage Community Association (PERCA). All participants were anonymized to ensure research ethics and confidentiality.

The research operationalized *kiai*'s religious hegemony through three indicators: community compliance with religious advice on marriage, the influence of *kiai* in family decision-making, and the perceived legitimacy of religious authority relative to state law. Legal consciousness was examined through participants' knowledge of marriage agreements, understanding of their legal consequences, and compliance with formal administrative procedures. These indicators enabled a systematic exploration of how religious authority shapes legal behaviour within Indonesia's plural legal system.

Data were analysed using the interactive model of Miles, Huberman, and Saldana, involving data collection, reduction, display, and conclusion drawing (Miles, Huberman and Saldana, 2019). Thematic coding and constant comparative analysis were employed

to identify patterns linking legal norms, religious authority, and community legal practices (Braun and Clarke, 2021; Wolgemuth and Guyotte, 2025). To ensure trustworthiness, the research applied source and method triangulation, member checking with key informants, and researcher reflexivity to minimize interpretive bias. Although the findings are not statistically generalisable beyond the Bawean case, they provide analytical generalisations concerning the influence of local religious authority on legal compliance and the implementation of marriage agreements in Indonesia's plural legal context.

The existence of mixed marriage institutions without marriage agreements in the Bawean Muslim community

Mixed marriages in Indonesia are legally regulated under Article 57 of the 1974 Marriage Law, which defines them as marriages between individuals subject to different legal systems due to differences in citizenship, specifically between an Indonesian citizen and a foreign national (Mujiburohman et al., 2023; Salsabilla, Muryanto and Dyah Kusumawati, 2024). This definition differs from the broader concept in the *Gemengde Huwelijken* Regulation (GHR), which historically covered inter-system marriages based on domicile rather than citizenship (Prawirohamidjojo, 1988). Contemporary Indonesian regulation thus narrows the definition by emphasizing citizenship as the principal legal determinant, reflecting a modern state-centric approach to transnational family governance (Mandey and Imon, 2026; Muhammadun, Nurkhafifah et al., 2026)

Empirically, mixed marriages in Indonesia have shifted from elite expatriate unions to broader social groups, including migrant workers and tourism-related labour sectors (Allagan and Sekarlangit, 2020). The East Java Regional Office of the Ministry of Religious Affairs through the Marriage Management Information System (SIMKAH) recorded 387 mixed marriages among 337,002 registered marriages in 2024 (Amanullah, 2025). Likewise, SIMKAH of Gresik Regency documented 6 mixed marriages out of 9,720 registered marriages during the same period (Kurniawan, 2025). Although statistically small, these cases are socially significant because they are concentrated in Bawean Island, a community deeply embedded in international labour migration networks and cross-border mobility (Yeoh, 2021). The interaction among long-term labour migration, transnational family formation, and religious marriage practices has generated distinctive legal challenges

regarding marital property, citizenship, inheritance, and the recognition of foreign legal systems within Indonesian family law (Maula, Zain and Nada, 2024; Antoni, 2025).

From a socio-legal perspective, these findings reflect what recent scholarship describes as everyday legal pluralism, where state law interacts with religious norms and transnational social practices in shaping legal behaviour (Benda-Beckmann and Turner, 2020; Hariri, A., Babussalam, 2024). In Bawean, the dominance of Islamic identity—where nearly 100% of residents in Sangkapura and Tambak are Muslim, supported by hundreds of mosques and surau (Kurniawan, 2025)—reinforces the authority of Islamic legal norms (*fiqh*) in regulating marriage. Within Islamic jurisprudence, the validity of marriage is primarily determined by the fulfillment of *rukun* and *syarat nikah*, which establish religious legitimacy (*sibbab al-nikah*) regardless of state administrative instruments. This aligns with contemporary Islamic legal discourse (Maloko et al., 2024), which emphasizes *maṣlahah* and the protection of lineage (*ḥifẓ al-nasl*) as core objectives of *maqāṣid al-shari'ah* (Dibaj and Sauqi, 2026).

Bawean's long-standing migration culture further intensifies this dynamic (Wiryanti, Oetami and Ali, 2022; Machmudi, 2024). Historically, Baweanese communities have engaged in circular migration to Malaysia, Singapore, the Middle East, and other regions, producing dense transnational family networks (Wiryanti, Utami and Anggraini, 2020). This mobility expands social interaction with foreign nationals and increases the likelihood of mixed marriages as a social outcome of sustained cross-border relations (Putra and Ardani, 2026). Transnational mobility reshapes legal consciousness, as individuals increasingly rely on religious legitimacy and community authority rather than formal state regulation to validate family relations (Shahar and Yefet, 2024; Febrianty et al., 2026). In this context, marriage becomes not only a legal contract but also a religiously sanctioned social institution embedded in local authority structures. Thus, the Bawean case illustrates how Islamic legal legitimacy and state law operate in parallel yet hierarchically negotiated domains (Yusuf et al., 2025). While state law emphasizes citizenship-based regulation, local communities prioritise *fiqh*-based validity, mediated by *kiai*, producing a lived form of legal pluralism in which Islamic norms serve as the primary reference for marital legitimacy.

This finding is reinforced by interviews with Amanullah (2025), an official of the East Java Regional Office of the Ministry of Religious Affairs, and Kurniawan (2025) from the

Gresik Regency Office of the Ministry of Religious Affairs. Both explained that mixed marriages in Bawean are predominantly entered into by Indonesian migrant workers (TKI/TKW). Three main factors explain this phenomenon. First, many Bawean people have lived for decades in Singapore, Malaysia, and the Middle East, fostering sustained social interaction that often leads to marriage. Second, marriage to a foreigner often provides easier access to employment and residence opportunities abroad. Third, such marriages are perceived as enhancing the family's social prestige and economic standing (Amanullah, 2025; Kurniawan, 2025).

Empirical data from surveys and questionnaires administered to six mixed-marriage couples in the Bawean Muslim community reveal that none of the respondents (100%) had entered into a marriage agreement (prenuptial or postnuptial agreement). This finding was confirmed by the Head of the Islamic Community Guidance Division of the East Java Regional Office of the Ministry of Religious Affairs and the Coordinator of PERCA East Java, who stated that most mixed-marriage couples in Bawean only recognized divorce certificates and were largely unfamiliar with marriage agreements (Kurniawan, 2025; Susiaty, 2025). This condition reflects limited public legal literacy about the importance of marital agreements in protecting property rights and resolving potential cross-border legal disputes, compounded by couples' low initiative to seek legal information (Susiaty, 2025).

Respondents further stated that their marriages were generally performed at the bride's or groom's residence by a *kiai*, witnessed by the neighbourhood head (RT), village officials, and family members, rather than at the Religious Affairs Office (KUA) or the Population and Civil Registration Office (Dukcapil). According to them, formal registration was considered administratively complicated, time-consuming, and burdensome due to documentary requirements (Azizah, 2025; Riyadi, 2025; Wahedah, 2025).

Their perception is understandable considering Article 60 of Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019, which requires proof that each party has fulfilled the legal requirements for marriage before a mixed marriage may be registered. These requirements are further elaborated in Regulation of the Minister of Religious Affairs Number 30 of 2024 concerning Marriage Registration, including a valid passport and residence permit, a Certificate of No Impediment (CNI), a birth certificate with an

official translation, evidence of divorce or death of a former spouse where applicable, and supporting administrative documents. Although intended to ensure legal certainty, these procedural requirements often discourage migrant couples from registering their marriages through formal state institutions (Maula, Zain and Nada, 2024; Antoni, 2025).

The absence of a marriage agreement in mixed marriages: normative negotiations of positive law and religious legitimacy

Mixed marriages create complex legal consequences concerning citizenship, the legal status of spouses, matrimonial property, inheritance, and the legal status of children. These issues become more complicated when the marriage involves different legal systems, making legal protection through a marriage agreement increasingly important (Yusrizal, 2024; Amir, Batari and Salam, 2026).

A marriage agreement is a written contract concluded by mutual consent before or during marriage and authenticated by the marriage registrar (Hidayat, Machmud, Manullang, & Sinaga, 2023; Maulida, Amruzi, 2025; Sugiastuti, 2025). Besides regulating the management and separation of marital property, it provides legal certainty for the spouses and may also bind third parties whose interests are affected. In mixed marriages, such agreements serve as a preventive legal instrument to minimise future disputes over property rights, nationality, and jurisdiction (Bagenda, 2021; Yosephine and Ramadhani, 2024; Chawla, 2025).

However, empirical findings from surveys and questionnaires involving mixed-marriage couples in the Bawean-Gresik Muslim community demonstrate a very limited understanding of the purpose and legal significance of marriage agreements. None of the respondents could clearly explain the function of such agreements. Interview data further confirmed that respondents did not execute marriage agreements simply because they were unaware that such legal instruments existed. They generally regarded a marriage as legally sufficient once the religious requirements and pillars of marriage had been fulfilled. One respondent stated that she had never received any information or legal education regarding marriage agreements and therefore believed that compliance with Islamic law alone was sufficient. Another respondent had only heard about marriage agreements informally from friends and was more familiar with the concept of verbal divorce (*talāq*) than with contractual arrangements governing marital property (Riyadi, 2025; Wahedah, 2025).

Several respondents also emphasized that the absence of a marriage agreement had not affected the stability of their marriages because mutual trust, religious legitimacy, and the husband's responsibility to support the family remained the primary foundations of marital life (Azizah-2, 2025; Muhassanah, 2025; Sholihah, 2025). This finding was reinforced by the Coordinator of PERCA East Java, who explained that many mixed-marriage couples still have limited awareness of the legal consequences of mixed marriages. Consequently, PERCA regularly conducts legal education on constitutional court decisions, immigration regulations, citizenship, residency permits, and property ownership to improve legal awareness among mixed-marriage families (Susiati, 2025). These findings indicate that the absence of marriage agreements reflects not only limited legal knowledge but also broader patterns of legal non-compliance within Indonesia's plural legal system (Fuspitasari, Nova, Maryono, SomajaiPeng, 2024; Lukmanulhakim, Guntara and Abbas, 2025).

Modern societies are characterised by legal pluralism, in which multiple normative orders coexist within the same social space (Tamanaha, 2021; Sinaga, Nurhayati and Affendi Mohmad Razali, 2022; Aziz et al., 2026). Consequently, state law operates alongside religious norms, customary law, and community practices that often possess equal or even greater social legitimacy. In the Bawean–Gresik Muslim community, Islamic jurisprudence (*fiqh*), interpreted and transmitted by local *kiai*, functions as the principal normative framework governing marriage. Accordingly, marriage agreements in mixed marriages are frequently perceived as administrative requirements imposed by the state rather than essential elements determining the validity of marriage (Susinto, 2021; Hafis and Nelli, 2026).

This condition reflects Sally Falk Moore's concept of semi-autonomous social fields, whereby communities possess the capacity to formulate and enforce their own normative systems while formally remaining subject to state law (Moore, 2000). Within the Baweanese community, religious authorities occupy a central position in defining legitimate marital practices. Consequently, although Indonesian law encourages marriage agreements as a mechanism to protect spouses and regulate cross-border legal consequences, such provisions often have limited practical influence because local normative authority is primarily derived from religious interpretations (Pertiwi and Sukti, 2025).

The interaction between these normative orders can further be understood through

the concept of legal consciousness developed by Patricia Ewick and Susan Silbey. Legal consciousness holds that individuals actively interpret legal rules rather than merely obey or violate them (Ewick and Silbey, 2014). In the Bawean context, state law represents only one normative reference, while Islamic law constitutes the primary source of legitimacy in family relations. Consequently, legal compliance is shaped not solely by statutory obligations but also by religious beliefs and community expectations (Helmi, Ishar, Pujiyono, Khamami, 2025).

Within this socio-legal framework, the absence of marriage agreements in mixed marriages reflects several analytically distinct forms of legal non-compliance, primarily legal ignorance. Many migrant workers entering mixed marriages possess limited knowledge regarding the legal implications of citizenship, matrimonial property, inheritance, or land ownership under Indonesian law. Their failure to conclude a marriage agreement, therefore, stems primarily from inadequate legal awareness rather than intentional violation of legal norms (Maulida and Amruzi, 2025).

The second form is pragmatic legal avoidance. Some couples understand the legal requirements but deliberately avoid formal procedures because they consider them administratively burdensome, costly, or unnecessary. For migrant workers who have spent years abroad, legal registration may seem less important than the practical benefits of marriage, including employment opportunities, residential stability, and international mobility. Consequently, avoiding administrative procedures becomes a rational response to everyday social realities rather than an outright rejection of the law (Antoni, 2025).

The third and most significant form is ideologically justified legal defiance. Individuals consciously prioritize religious legitimacy over state law, believing that a marriage is valid if it meets the essential pillars of Islamic law: the presence of a guardian, witnesses, mutual consent (*ijab-qabul*), and dowry as guided by *keiai* and Islamic teachings. Marriage agreements are therefore regarded merely as administrative complements rather than indispensable legal obligations. This illustrates how religious legitimacy may supersede formal legal compliance in legally plural societies (Maula, Zain and Nada, 2024; Thohir et al., 2026).

These various forms of legal consciousness demonstrate that mixed marriages without marriage agreements cannot simply be interpreted as unlawful behaviour. Instead, they

represent a process of navigating multiple normative systems simultaneously. Individuals continually navigate among religious norms, community expectations, and state regulations to determine legally and socially acceptable conduct. Accordingly, what appears as legal non-compliance is better understood as an ongoing process of normative negotiation rather than as simple resistance to state authority (Muhammadun, Nurkhafifah et al., 2026).

This interpretation is reinforced by the Bawean experience, where marriage agreements are not immediately understood as mandatory legal instruments but are first reinterpreted through local religious values. Religious leaders function as normative brokers, mediating state regulations within the framework of Islamic teachings (Bowen, 2003). Consequently, the absence of marriage agreements reflects a process of normative bargaining, whereby individuals selectively reconcile competing legal orders according to those perceived as possessing greater legitimacy (von Benda-Beckmann, von Benda-Beckmann and Griffiths, 2016). Such behaviour represents adaptation to legal pluralism rather than outright rejection of state law (Anwar et al., 2025).

From a socio-legal perspective, the effectiveness of family law depends not only on the formal authority of legislation but also on its cultural legitimacy within society (Ehrlich and Ziegert, 2017; Tamanaha, 2021). The Bawean case therefore demonstrates that the principal obstacle to implementing marriage agreements is not merely limited legal awareness but a continuing contestation of authority between state institutions and religious leadership in determining which normative system should govern family life (Menski, 2006). Strengthening the implementation of marriage agreements consequently requires not only legal reform but also culturally sensitive legal education and constructive engagement with religious authorities who exercise significant influence within local Muslim communities (Putra and Ardani, 2026).

The hegemony of the *Kiai* against the practice of mixed marriages without a marriage agreement

Empirical findings indicate that mixed marriages in the Bawean–Gresik Muslim community are predominantly solemnized before a *kiai* rather than through formal state institutions. Respondents consistently stated that the religious validity of marriage, ensured by the presence of a guardian, witnesses, *ijab-qabul*, and dowry, was regarded as sufficient, whereas

marriage agreements were viewed merely as administrative matters. Interviews with religious and governmental authorities further revealed that this perception contributes to the low prevalence of marriage agreements among mixed-marriage couples (Amanullah, 2025; Kurniawan, 2025).

These findings can be explained through the concept of religious authority within legal pluralism. In the Bawean community, the *kiai* occupies a central socio-religious position, exercising both spiritual leadership and normative authority that shapes collective legal behaviour (Munjahid, 2022). Rather than relying primarily on state institutions, community members tend to seek religious guidance in matters of family law because the *kiai* enjoys higher cultural legitimacy and social trust. Consequently, the legality of marriage is interpreted principally through Islamic jurisprudence (*fiqh*), while state administrative requirements receive secondary attention (Muzakki and Wahid, 2025; Suhardi, 2025).

From a socio-legal perspective, this phenomenon demonstrates a shift in the locus of legal legitimacy, where validity is not determined exclusively by statutory rules but is shaped by community recognition of religious authority. Accordingly, the *kiai* serves as a normative broker who mediates, interprets, and selectively integrates state law into local religious understandings. This supports socio-legal scholarship arguing that the effectiveness of law depends not only on formal legislation but also on the cultural legitimacy of those who interpret and implement legal norms (Aidonojie, Jufri and Garunja, 2024; Gunawan and Hakim, 2024; Taufiq et al., 2024).

The operation of religious authority can further be analysed through Antonio Gramsci's concept of hegemony, whereby domination is maintained primarily through social consent rather than coercion (Hoare, 1992). In the Bawean context, the authority of the *kiai* represents a form of religious hegemony in which interpretations of Islamic law become widely accepted as the normative standard governing marriage. Consequently, compliance with Islamic legal requirements is perceived as sufficient to establish marital legitimacy, while marriage agreements remain secondary administrative instruments with limited practical significance (Susilo et al., 2022; Kasdi et al., 2026).

Researchers found that this hegemonic influence is reproduced through three interconnected mechanisms. First, informal religious opinions disseminated during

sermons, religious gatherings, and personal consultations consistently emphasize the sufficiency of Islamic legal requirements for marriage while rarely discussing the legal significance of marriage agreements. Second, Islamic boarding schools (*pesantren*) reinforce these understandings by transmitting classical *fiqh* perspectives on marriage to successive generations. Third, these religious interpretations are reproduced within families, where parents socialise children into believing that religious legitimacy constitutes the primary basis of lawful marriage. Through these overlapping processes, religious interpretations become internalised as shared social norms that shape legal behaviour. This pattern is consistent with Sumarkan and Choiroh's (Sumarkan, 2022) finding that religious authority, particularly the authority of the *kiai*, family interests, and deeply embedded socio-cultural traditions may collectively shape marital behaviour and influence the extent to which communities prioritise religiously legitimised norms over formal state law.

This study argues that these empirical findings should not be interpreted simply as evidence of low legal awareness. Instead, they demonstrate an ongoing contestation between state law and religious authority within Indonesia's plural legal system. Marriage agreements are not rejected because communities oppose state law; rather, they are reinterpreted through a normative framework in which religious legitimacy carries greater social authority. Consequently, the absence of marriage agreements reflects a process of normative selection in which individuals prioritise the legal order they perceive as most legitimate for regulating family life. This analysis confirms that the implementation of family law depends on statutory regulation and on the interaction among legal pluralism, religious authority, and community legal consciousness. Therefore, strengthening compliance with marriage agreement provisions requires culturally responsive legal education and greater collaboration between state institutions and religious leaders, who remain the most influential actors in shaping legal culture within the Bawean–Gresik Muslim community (Afandi, 2022; Muhammadun, Nurkhafifah et al., 2026).

Public Perception

This study indicates that public perceptions of mixed marriages without marriage agreements in the Bawean–Gresik Muslim community are shaped more by religious values

and local legal culture than by formal legal knowledge. Respondents consistently stated that a mixed marriage is socially and religiously accepted, provided both spouses are Muslims and the essential requirements of Islamic marriage—guardian, witnesses, *ijab-qabul*, and dowry—are fulfilled. Marriage agreements are generally regarded as optional administrative instruments rather than determinants of marital validity. This perception is strengthened by the religious authority of local *kiais*, whose advice and informal legal opinions serve as the principal reference for community members (Muhammadun, Nurkhafifah et al., 2026).

These findings reflect the broader concept of legal consciousness, which explains that individuals construct the meaning of law through everyday social experiences rather than merely following statutory provisions (Amiruddin et al., 2024). In the Bawean community, legal legitimacy is interpreted primarily through religious norms and community recognition, while state regulations concerning marriage agreements occupy a secondary position. Consequently, legal behaviour is influenced more by culturally embedded understandings than by formal legal obligations (Susinto, 2021; Hafis and Nelli, 2026).

Interviews with religious and community leaders further demonstrate that mixed marriages are widely accepted once religious compatibility and family responsibility are assured. Social legitimacy is strengthened through community recognition, family acceptance, and marriage ceremonies conducted by *kiai*. Community leaders also emphasized that successful mixed marriages largely depend on mutual understanding of cultural differences, whereas the decision to enter into a marriage agreement remains a matter of personal choice rather than religious necessity (Muzakki and Wahid, 2025; Suhardi, 2025).

The study identifies three dominant public perceptions regarding marriage agreements. The first considers them legally necessary to protect property, citizenship, and inheritance rights. The second regards them as beneficial but optional, depending on the couple's circumstances. The third and the most prevalent within the Bawean community view marriage agreements as unnecessary because they are believed to reduce mutual trust and undermine the symbolic sanctity of marriage. This perspective reflects a cultural understanding that marital harmony should be founded on religious commitment and interpersonal trust rather than contractual arrangements (Maula, Zain and Nada, 2024).

From a socio-legal perspective, these findings illustrate the interaction between legal pluralism and local legal culture. The absence of marriage agreements should therefore not be interpreted solely because of limited legal awareness, but also as the product of culturally constructed meanings surrounding marriage. Religious authority, family socialisation, and community acceptance collectively shape public perceptions that prioritize Islamic legitimacy over formal administrative requirements. Accordingly, improving compliance with marriage agreement provisions requires not only legal dissemination but also culturally sensitive legal education involving religious leaders, who possess greater normative influence within the Bawean–Gresik Muslim community (Antoni, 2025; Pertiwi and Sukti, 2025).

Mixed marriage without a marriage agreement as legally recognized marital practice but has legal consequences for the family: *a critical reflection*

A marriage agreement serves as a preventive legal instrument designed to protect both spouses by regulating the ownership, management, and separation of marital property. In the context of mixed marriages, its significance extends beyond private contractual arrangements because it safeguards the legal rights of Indonesian citizens concerning citizenship, inheritance, and land ownership (Hartini, 2024). Under Article 35 of the Marriage Law, property acquired during marriage constitutes joint marital property. However, Indonesian agrarian law restricts foreign nationals from holding ownership rights over land. Consequently, Indonesian citizens who marry foreign nationals without a marriage agreement risk losing the ability to acquire or retain full ownership of land because such property becomes part of the joint marital estate (Rohaini, Soeriatmadja and Nurhakim, 2004; Salsabilla, Muryanto and Kusumawati, 2024).

Empirical findings from surveys and interviews conducted with mixed-marriage couples in the Bawean–Gresik Muslim community reveal a substantial gap between legal regulation and public understanding. None of the respondents (100%) demonstrated adequate knowledge of the legal consequences arising from the absence of a marriage agreement. Instead, respondents believed that their marriages were secure because their spouses continued to fulfill family responsibilities by providing financial support and financing their children's education (Azizah, 2025; Azizah-2, 2025; Sholihah, 2025). They further assumed that mixed marriages were similar to ordinary marriages, that assets acquired during

marriage automatically belonged to both partners because they were earned through joint efforts, and that no government institution had ever provided adequate legal education concerning marriage agreements (Kumar, 2024; Marsella et al., 2024).

These findings can be explained through the concept of legal consciousness, which emphasizes that legal behaviour is shaped by everyday social meanings rather than solely by statutory rules. Within the Bawean community, marital legitimacy is interpreted primarily through compliance with Islamic legal requirements, while marriage agreements are viewed merely as optional administrative procedures. Consequently, legal protection offered by state law receives less attention than religious legitimacy and mutual trust between spouses (Susinto, 2021).

This phenomenon reflects not merely limited legal literacy but also the operation of legal pluralism, in which religious norms dominate everyday legal decision-making. Community members prioritize *fiqh*-based understandings of marriage because these norms possess greater cultural legitimacy than formal legal regulations. As a result, legal risks relating to land ownership, matrimonial property, citizenship, and inheritance are frequently overlooked until disputes arise. The absence of marriage agreements, therefore, represents not simply individual legal ignorance but a socially constructed pattern of legal behaviour shaped by religious authority and community legal culture (Muhammadun, Nurkhafifah et al., 2026).

This study demonstrates that strengthening the implementation of marriage agreements requires more than statutory regulation. Effective legal protection for mixed-marriage families depends on improving legal literacy through culturally responsive education involving the Office of Religious Affairs (*KUA*), local government agencies, and religious leaders. Integrating formal legal education with religious guidance would enable marriage agreements to be understood not as instruments that undermine trust, but as preventive mechanisms that complement Islamic values by protecting the long-term rights and interests of spouses and their children (Ridzuan, Asharudin and Mohammad, 2023; Rizani et al., 2026).

Empirical findings demonstrate that the authority of the *kiai* plays a decisive role in shaping community perceptions of the legal validity of mixed marriages in the Bawean–

Gresik Muslim community. Respondents consistently stated that marriages solemnized by a *kiai* in accordance with Islamic law were considered fully legitimate, regardless of whether they were accompanied by a marriage agreement or formally registered by the state. In this context, the *kiai* functions not only as a religious leader but also as a normative authority whose interpretation of Islamic law strongly influences community legal behaviour (Muzakki and Wahid, 2025).

These findings can be understood through the socio-legal concept of living law, which argues that norms recognized and practiced by society often possess greater legitimacy than formal legal rules (Grijns, 2018; Lestari, 2023). In the Bawean community, classical *fiqh* constitutes the primary normative framework governing marriage. Consequently, religious legitimacy becomes the principal determinant of marital validity, while marriage agreements are generally perceived as administrative instruments rather than essential legal safeguards. This illustrates how legal pluralism allows religious normative orders to coexist with—and frequently prevail over—state legal regulations in everyday legal practice (Luthfi, Fajrin and Bachtiar, 2024; Akbar and Laman, 2025).

The researcher argues that this legal culture is continuously reproduced through community socialisation. Religious teachings transmitted by *kiai*, reinforced through family education and community religious activities, gradually become internalised as collective legal consciousness. As a result, successive generations inherit the belief that compliance with Islamic legal requirements is sufficient to establish lawful marriage, whereas formal state procedures receive comparatively limited attention. The widespread acceptance of mixed marriages without marriage agreements, therefore, reflects a socially constructed normative order rather than deliberate resistance to state law (Barkah, 2023; Jamil et al., 2023).

This culturally accepted practice generates significant legal consequences. Under Indonesian family and agrarian law, property acquired during marriage constitutes joint marital property, while foreign nationals are prohibited from holding ownership rights over land (Mujiburohman et al., 2023; Hartanto and Susilo, 2025). Consequently, Indonesian citizens entering mixed marriages without a marriage agreement may encounter restrictions concerning land ownership and other proprietary rights because marital assets become

jointly owned with a foreign spouse. These legal risks remain largely unrecognized by many couples due to limited legal literacy and the predominance of religious legitimacy in shaping legal decisions (Anugerahayu et al., 2026).

Beyond property issues, the absence of marriage agreements may also weaken legal protection for women and children. Women may experience greater difficulties asserting rights to inheritance, the division of marital property, or legal remedies following marital disputes or divorce. Likewise, children born from unprotected mixed marriages may encounter administrative obstacles concerning citizenship, civil registration, legal identity, inheritance, and access to social protection. Although Indonesian law provides mechanisms to address some of these issues, inadequate legal documentation frequently complicates their implementation (Andriani and Prasetyo, 2023).

These findings highlight the ongoing tension between religious legitimacy and formal legal protection in Indonesia's pluralistic legal system. Respect for religious values remains a crucial foundation for the implementation of Islamic family law. However, the effectiveness of family law in a modern constitutional state also requires legal certainty that provides preventive protection for vulnerable family members, particularly women and children (Mulyadi et al., 2023; Nugroho and Dewi, 2024). In this context, the absence of prenuptial agreements in mixed marriages does not merely reflect a lack of legal knowledge in society but rather is a consequence of the simultaneous negotiation process among religious norms, religious authorities, local culture, and state law. These findings make an important contribution to the development of studies of legal pluralism, law and society, and comparative family law by demonstrating that legal compliance in plural societies is not always determined by the regulatory capacity of the state, but also by the level of social legitimacy that religious institutions and authorities possess in shaping people's legal awareness (Tamanaha, 2021; Anggraeni, 2023).

This research highlights that harmonizing religious law and state law cannot be achieved solely through legislative reform or law enforcement. A more effective approach is to build a normative mediation process through culturally responsive legal education involving actors with high social legitimacy in the community. In the Bawean-Gresik Muslim community, *kiai* act as norm entrepreneurs and trusted intermediaries who are

able to transform the marriage agreement from a mere administrative instrument of the state into part of the effort to realize the objectives of *maqāṣid al-syarī'ah*, particularly the protection of property (*ḥifẓ al-māl*), family (*ḥifẓ al-nasl*), and justice in marital relations. This research also contributes to the international literature on legal pluralism by showing that the effectiveness of law depends on the state's ability to build constructive coexistence with non-state normative orders. Hence, the implementation of marriage agreements should be understood as a preventive mechanism that complements, rather than challenges, religious legitimacy (Muchimah et al., 2026).

Based on these findings, this research recommends developing a collaborative legal education model that involves the Office of Religious Affairs (KUA), local government, and *kiai* as key actors in disseminating information about family law. This model offers an approach that synergizes religious law and state law, serving as a foundation for family protection that is more comprehensive, equitable, and sustainable. The model has the potential to serve as a best practice for countries with pluralistic legal systems, as it demonstrates that family law protection is more effective when built upon an integration of religious legitimacy, social acceptance, and state legal certainty. Thus, this research contributes empirically within the Indonesian context and offers a conceptual framework that can enrich international scholarship on family law governance in multijuridical societies (Bowen, 2003; Ritonga, Shodiq and Atsani, 2026).

Conclusion

This research shows that the persistence of mixed marriages without marriage agreements in the Bawean–Gresik Muslim community cannot be explained merely by limited knowledge of state law. Rather, it reflects a process of religiously mediated legal consciousness, in which legal decisions are shaped through normative negotiation within a plural legal order. In this context, the authority of *kiai* functions as the primary source of normative legitimacy, leading community members to prioritize the substantive validity of marriage under Islamic law over formal administrative requirements prescribed by Indonesian marriage law. Although no direct empirical evidence of disputes arising from the absence of marriage agreements was identified, the findings reveal latent legal vulnerabilities concerning marital

property, inheritance, citizenship, and the protection of women and children. Therefore, state law should be understood not only as a dispute-resolution mechanism but also as a preventive framework for safeguarding future legal rights.

Theoretically, this research contributes to socio-legal scholarship by integrating legal pluralism, legal consciousness, and religious hegemony into a unified analytical framework. It proposes the concept of religiously mediated legal consciousness to explain how religious authority mediates legal compliance, shapes perceptions of legal legitimacy, and structures selective engagement with state law. This contribution goes beyond the binary of compliance versus non-compliance by showing that legal behaviour in plural societies emerges through continuous negotiation among state law, religious norms, and local institutions. From a policy perspective, effective family law protection requires culturally responsive governance that engages religious leaders as strategic partners in translating state legal norms into locally accepted legitimacy while safeguarding the rights of women and children. Future comparative research should examine whether similar mechanisms operate in other Muslim societies and transnational migration settings.

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